

## § 114.1

## 11 CFR Ch. I (1–10 Edition)

AUTHORITY: 2 U.S.C. 431(8), 431(9), 432, 434, 437d(a)(8), 438(a)(8), and 441b.

### § 114.1 Definitions.

(a) For purposes of part 114 and section 12(h) of the Public Utility Holding Company Act (15 U.S.C. 79(h))—

(1) The terms *contribution* and *expenditure* shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, if such loan is made in accordance with 11 CFR 100.82(a) through (d)) to any candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to in 11 CFR 114.2 (a) or (b) as applicable.

(2) The terms *contribution* and *expenditure* shall not include—

(i) Communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and executive or administrative personnel, and their families, on any subject;

(ii) Registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel, and their families, or by a labor organization aimed at its members and executive or administrative personnel, and their families, as described in 11 CFR 114.3;

(iii) The establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock;

(iv) [Reserved]

(v) The sale of any food or beverage by a corporate vendor for use in a candidate's campaign or for use by a political committee of a political party at a charge less than the normal of comparable commercial rate, if the charge is at least equal to the costs of such food or beverage to the vendor, to the

extent that: The aggregate value of such discount by the vendor on behalf of a single candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year.

(vi) The payment for legal or accounting services rendered to or on behalf of any political committee of a political party other than services attributable to activities which directly further the election of a designated candidate or candidates for Federal office if the corporation or labor organization paying for the services is the regular employer of the individual rendering the services. This exclusion shall not be applicable if additional employees are hired for the purpose of rendering services or if additional employees are hired in order to make regular employees available;

(vii) The payment for legal or accounting services rendered to or on behalf of an authorized committee of a candidate or any other political committee solely for the purpose of ensuring compliance with this Act or chapter 95 or 96 of the Internal Revenue Code of 1954 if the corporation or labor organization paying for the services is the regular employer of the individual rendering the services, but amounts paid or incurred for these services shall be reported in accordance with part 104. This exclusion shall not be applicable if additional employees are hired for the purpose of rendering services or if additional employees are hired in order to make regular employees available;

(viii) Activity permitted under 11 CFR 9008.9, 9008.52 and 9008.53 with respect to a presidential nominating convention;

(ix) Donations to a State or local party committee used for the purchase or construction of its office building are subject to 11 CFR 300.35. No exception applies to contributions or donations to a national party committee that are made or used for the purchase or construction of any office building or facility; or

(x) Any activity which is specifically permitted by part 114.

## Federal Election Commission

## § 114.1

(b) *Establishment, administration, and solicitation costs* means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fund-raising and other expenses incurred in setting up and running a separate segregated fund established by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

(c) *Executive or administrative personnel* means individuals employed by a corporation or labor organization who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(1) This definition includes—

(i) The individuals who run the corporation's business such as officers, other executives, and plant, division, and section managers; and

(ii) Individuals following the recognized professions, such as lawyers and engineers.

(2) This definition does *not* include—

(i) Professionals who are represented by a labor organization;

(ii) Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees;

(iii) Former or retired personnel who are not stockholders; or

(iv) Individuals who may be paid by the corporation or labor organization, such as consultants, but who are not employees, within the meaning of 26 CFR 31.3401(c)-1, of the corporation or labor organization for the purpose of income withholding tax on employee wages under Internal Revenue Code of 1954, section 3402.

(3) Individuals on commission may be considered executive or administrative personnel if they have policymaking, managerial, professional, or supervisory responsibility and if the individuals are employees, within the meaning of 26 CFR 31.3401(c)-1 of the corporation for the purpose of income withholding tax on employee wages under the Internal Revenue Code of 1954, section 3402.

(4) The Fair Labor Standards Act, 29 U.S.C. 201, *et seq.* and the regulations issued pursuant to that Act, 29 CFR part 541, may serve as a guideline in determining whether individuals have

policymaking, managerial, professional, or supervisory responsibilities.

(d) *Labor organization* means any organization of any kind, or any agency or employee representative committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(e)(1) For purposes of this part *membership organization* means a trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(i) Is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents;

(ii) Expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;

(iii) Makes its articles, bylaws, constitution, or other formal organizational documents available to its members upon request;

(iv) Expressly solicits persons to become members;

(v) Expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and

(vi) Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office.

(2) For purposes of this part, the term *members* includes all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:

(i) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake; or

(ii) Pay membership dues at least annually, of a specific amount predetermined by the organization; or

(iii) Have a significant organizational attachment to the membership organization which includes: affirmation of membership on at least an annual basis; and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote directly for organization officers; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

(3) Notwithstanding the requirements of paragraph (e)(2) of this section, the Commission may determine, on a case-by-case basis, that persons who do not precisely meet the requirements on the general rule, but have a relatively enduring and independently significant financial or organizational attachment to the organization, may be considered members for purposes of this section. For example, student members who pay a lower amount of dues while in school, long term dues paying members who qualify for lifetime membership status with little or no dues obligation, and retired members of the organization may be considered members for purposes of these rules.

(4) Notwithstanding the requirements of paragraphs (e)(2)(i) through (iii) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

(5) In the case of a membership organization which has a national federation structure or has several levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraphs (e)(2)(i), (ii), or (iii) of this section shall also qualify as a member of all affiliates for purposes of this part. The factors set forth at 11

CFR 100.5 (g)(2), (3) and (4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

(6) The status of a membership organization, and of members, for purposes of this part, shall be determined pursuant to paragraph (e)(1) of this section and not by provisions of state law governing trade associations, cooperatives, corporations without capital stock, or labor organizations.

(f) *Method of facilitating the making of contributions* means the manner in which the contributions are received or collected such as, but not limited to, payroll deduction or checkoff systems, other periodic payment plans, or return envelopes enclosed in a solicitation request.

(g) *Method of soliciting voluntary contributions* means the manner in which the solicitation is undertaken including, but not limited to, mailings, oral requests for contributions, and hand distribution of pamphlets.

(h) *Stockholder* means a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends.

(i) *Voluntary contributions* are contributions which have been obtained by the separate segregated fund of a corporation or labor organization in a manner which is in compliance with § 114.5(a) and which is in accordance with other provisions of the Act.

(j) *Restricted class*. A corporation's restricted class is its stockholders and executive or administrative personnel, and their families, and the executive and administrative personnel of its subsidiaries, branches, divisions, and departments and their families. A labor organization's restricted class is its members and executive or administrative personnel, and their families. For communications under 11 CFR 114.3, the restricted class of an incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock is its members and executive or administrative personnel, and their families. (The solicitable class of a membership organization, cooperative, corporation without capital stock or trade association, as described in 11

## Federal Election Commission

## § 114.2

CFR 114.7 and 114.8, may include some persons who are not considered part of the organization's restricted class, and may exclude some persons who are in the restricted class.)

(2 U.S.C. 431(8)(B)(iii), 432(c)(3), 438(a)(8), 441b; 2 U.S.C. 441b, 437d(a)(8))

[41 FR 35955, Aug. 25, 1976, as amended at 44 FR 63045, Nov. 1, 1979; 45 FR 15125, Mar. 7, 1980; 45 FR 21210, Apr. 1, 1980; 48 FR 50508, Nov. 2, 1983; 57 FR 1640, Jan. 15, 1992; 58 FR 45775, Aug. 30, 1993; 59 FR 33615, June 29, 1994; 60 FR 64273, Dec. 14, 1995; 64 FR 41273, July 30, 1999; 67 FR 49120, July 29, 2002; 67 FR 78681, Dec. 26, 2002]

### **§ 114.2 Prohibitions on contributions, expenditures and electioneering communications.**

(a) National banks and corporations organized by authority of any law of Congress are prohibited from making a contribution, as defined in 11 CFR 114.1(a), in connection with any election to any political office, including local, State and Federal offices, or in connection with any primary election or political convention or caucus held to select candidates for any political office, including any local, State or Federal office. National banks and corporations organized by authority of any law of Congress are prohibited from making expenditures as defined in 11 CFR 114.1(a) for communications to those outside the restricted class expressly advocating the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party, with respect to an election to any political office, including any local, State, or Federal office.

(1) Such national banks and corporations may engage in the activities permitted by 11 CFR part 114, except to the extent that such activity is foreclosed by provisions of law other than the Act.

(2) The provisions of 11 CFR part 114 apply to the activities of a national bank, or a corporation organized by any law of Congress, in connection with local, State and Federal elections.

(b)(1) Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11 CFR part 100, subpart B. Any corporation whatever or any labor organi-

zation is prohibited from making a contribution as defined in 11 CFR 114.1(a) in connection with any Federal election.

(2) Except as provided at 11 CFR 114.10, corporations and labor organizations are prohibited from:

(i) Making expenditures as defined in 11 CFR part 100, subpart D; or

(ii) Making expenditures with respect to a Federal election (as defined in 11 CFR 114.1(a)), for communications to those outside the restricted class that expressly advocate the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party.

(3) Corporations and labor organizations are prohibited from making payments for an electioneering communication to those outside the restricted class unless permissible under 11 CFR 114.10 or 114.15. However, this paragraph (b)(3) shall not apply to State party committees and State candidate committees that incorporate under 26 U.S.C. 527(e)(1), provided that:

(i) The committee is not a political committee as defined in 11 CFR 100.5;

(ii) The committee incorporated for liability purposes only;

(iii) The committee does not use any funds donated by corporations or labor organizations to make electioneering communications; and

(iv) The committee complies with the reporting requirements for electioneering communications at 11 CFR part 104.

(c) Disbursements by corporations and labor organizations for the election-related activities described in 11 CFR 114.3 and 114.4 will not cause those activities to be contributions or expenditures, even when coordinated with any candidate, candidate's agent, candidate's authorized committee(s) or any party committee to the extent permitted in those sections. Coordination beyond that described in 11 CFR 114.3 and 114.4 shall not cause subsequent activities directed at the restricted class to be considered contributions or expenditures. However, such coordination may be considered evidence that could negate the independence of subsequent communications to those outside the restricted class by the corporation,